

² The Board notes that following the June 24, 2024 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On June 3, 2020 appellant, then a 38-year-old processing clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a back condition due to factors of her federal employment. She noted that she first became aware of her condition on August 4, 2018, and realized its relationship to her federal employment on May 20, 2020.

By decision dated July 22, 2020, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the events occurred as alleged.

On August 17, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 17, 2020.

By decision dated January 28, 2021, OWCP's hearing representative reversed the July 22, 2020 decision and directed OWCP to accept the claim for lumbar and thoracic ligament sprains.

By decision dated January 29, 2021, OWCP accepted the claim for lumbar and thoracic ligament sprains.

In a letter dated September 15, 2022, appellant requested expansion of the acceptance of her claim to include lumbar intervertebral disc disorder with radiculopathy and lumbar intervertebral disc displacement. She submitted an August 24, 2022 report from Dr. Tuan Huynh, a physician specializing in family medicine, in support of her request. Dr. Huynh provided examination findings, reviewed diagnostic studies, and diagnosed lumbar intervertebral disc disorders with radiculopathy and lumbar intervertebral disc displacement.

OWCP subsequently received a June 29, 2022 report from Dr. Huynh. In this report, Dr. Huynh recounted that while appellant was initially diagnosed with sprained lumbar ligaments, following a magnetic resonance imaging (MRI) scan disc bulges at L3-S1 were diagnosed. He related that appellant condition was an overexertion injury, that was caused when appellant performed her job duties by lifting packages that weighed between 1 to 70 pounds. Anatomically her continued lifting and twisting at the waist place a load on her spine, up to a point where the discs became pushed into canals where spinal nerves exist the spine. Dr. Huynh also further described the mechanics of a spinal injury.

By decision dated April 3, 2023, OWCP denied appellant's request to expand her claim to include additional conditions.

OWCP continued to receive medical evidence. Dr. Barry Stringfield, a Board-certified internist, in a December 13, 2021 work capacity evaluation (Form OWCP-5c), noted appellant's work-related lumbar and thoracic ligament sprains and provided work restrictions.

In November 2 and 8, 2023 reports, Dr. Huynh explained that appellant injured her back as a result of work activities. In the November 8, 2023 report, he reiterated appellant's additional diagnoses and his opinion regarding causal relationship.

In a November 2, 2023 and January 17, 2024 prescription for therapy reports, Dr. Huynh detailed a history of injury and appellant's symptoms, noted reduced lumbar range of motion, and reviewed diagnostic studies. He diagnosed lumbar and thoracic ligament sprains.

Dr. Huynh, in a January 17, 2024 duty status report (Form CA-17), diagnosed lumbar ligament sprain.

On April 3, 2024 OWCP received an undated and unsigned form requesting reconsideration.

In a letter dated April 8, 2024, OWCP noted receipt of appellant's unsigned and undated form requesting reconsideration. It informed her that no further action would be taken on her request for reconsideration.

OWCP subsequently received a March 14, 2023 prescription for physical therapy for treatment of appellant's thoracic and lumbar sprains and a Form CA-17 diagnosing low back pain from Dr. Huynh. Also received was a March 14, 2023 narrative report, wherein Dr. Huynh reiterated that appellant's diagnoses were employment related.

On June 17, 2024 appellant requested reconsideration.

By decision dated June 24, 2024, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.³ This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.⁴ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.⁷ If a request demonstrates clear evidence of error, OWCP will reopen the case for merit review.⁸

³ 5 U.S.C. § 8128(a); *B.C.*, Docket No. 25-0214 (issued February 7, 2025); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁶ *B.C.*, *supra* note 3; *R.L.*, Docket No. 18-0496 (issued January 9, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁷ *See* 20 C.F.R. § 10.607(b); *B.C.*, *supra* note 3; *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁸ *D.O.*, Docket No. 25-0135 (issued January 27, 2025); *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also id.* at § 10.607(b); *supra* note 5 at Chapter 2.1602.5 (September 2020).

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error. It is not enough to merely show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.⁹

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard and the claimant must present evidence, which on its face shows that OWCP made an error.¹⁰ Evidence such as a detailed, well-rationalized medical report, which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹¹ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹²

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, as it was untimely filed and failed to demonstrate clear evidence of error.

OWCP's regulations¹³ and procedures¹⁴ establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.¹⁵ The most recent adverse merit decision was OWCP's April 3, 2023 decision. As OWCP did not receive appellant's signed request for reconsideration until June 17, 2024, more than one year after the April 3, 2023 decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error on the part of OWCP in denying her claim.

Following the April 3, 2023 decision, appellant submitted additional evidence. In a December 13, 2021 Form OWCP-5c, Dr. Stringfield noted the accepted conditions of lumbar and thoracic sprains and that since a 2017 automobile accident appellant had low back pain and spinal degenerative disc disease. In prescription for therapy reports dated March 14, November 2, 2023, and January 17, 2024 and a Form CA-17 dated January 17, 2024, Dr. Huynh only noted appellant's diagnoses of lumbar and thoracic sprain. In narrative reports dated March 14 and November 8,

⁹ *D.O., id.*; *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁰ *B.C.*, *supra* note 3; *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 5 at Chapter 2.1602.5a (September 2020).

¹¹ *Id.*

¹² *D.O.*, *supra* note 8; *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹³ 20 C.F.R. § 10.607(a); *see B.C.*, *supra* note 3; *F.N.*, Docket No. 18-1543 (issued March 6, 2019); *Alberta Dukes*, 56 ECAB 247 (2005).

¹⁴ *Supra* note 5 at Chapter 2.1602.4 (September 2020-); *see D.O.*, *supra* note 8; *L.A.*, Docket No. 19-0471 (issued October 29, 2019); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

¹⁵ 20 C.F.R. § 10.607(b); *see B.C.*, *supra* note 3; *Debra McDavid*, 57 ECAB 149 (2005).

2023, he related appellant's diagnoses of bulging discs at L3-S1 and offered an explanation of causal relationship. However, none of this evidence manifests on its face that OWCP committed an error in denying expansion of the acceptance of the claim.¹⁶

The Board notes that clear evidence of error is intended to represent a difficult standard.¹⁷ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹⁸ Even evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹⁹ Accordingly, the Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

¹⁶ *J.C.*, Docket No. 20-1250 (issued May 24, 2021); *W.D.*, Docket No. 19-0062 (issued April 15, 2019).

¹⁷ *See supra* note 5 at Chapter 2.1602.5a (September 2020); *see also E.R.*, Docket No. 24-0681 (issued July 29, 2024); *see also K.W.*, Docket No. 19-1808 (issued April 2, 2020); *J.S.*, Docket No. 16-1240 (issued December 1, 2016).

¹⁸ *Id.*

¹⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board